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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|--------------------------------------|------------------|
| 10/727,618 | 12/05/2003 | Francis Amoah | 114975 | 7897 |
| 25944 | 7590 | 02/07/2006 | | |
| OLIFF & BERRIDGE, PLC P.O. BOX 19928 ALEXANDRIA, VA 22320 | | | EXAMINER ROLLINS, ROSILAND STACIE | |
| | | | ART UNIT 3739 | PAPER NUMBER |

DATE MAILED: 02/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|------------------------------|---------------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/727,618 | AMOAH, FRANCIS |
| | Examiner Rosiland S. Rollins | Art Unit 3739 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 11/22/05.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3,4,6,8-10 and 12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3,4,6,8-10 and 12 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

Conclusion

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 6, 8-10 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stern et al. (US 5755715). In column 5 lines 10+ and figure 6b, Stern et al. disclose a probe adapted to contact body tissue, and having at least one electrode, at least one temperature sensor capable of measuring the temperature of the probe and generating signals representative of the temperature, a controller comprising generation means for generating electromagnetic energy and supplying said energy to the at least one electrode, and control means for receiving the signals from the at least one temperature sensor and controlling the generation means such that the temperature of the probe is ramped up to a temperature, first equilibration the temperature of the probe is held substantially constant at the equilibration temperature for a period of time to allow the temperature of different parts of the probe to equilibrate, and the temperature of the probe is then increased to and maintained at a final steady state temperature.

Stern et al. disclose the steps of initially ramping the temperature of the probe up, holding the temperature constant for a period of time and then increasing the temperature as illustrated in figure 6B. Since Stern et al. disclose the same method

steps as claimed by Applicant required for equilibrating the temperature of the probe, Stern et al. inherently performs the same function.

Stern et al. teach all of the limitations of the claims except the first equilibration temperature being between 90 and 105 degrees Celsius and the final steady state temperature being between 100 and 115 degrees Celsius. It would have been obvious to one having ordinary skill in the art at the time the invention was made to select the first temperature from the range of 90 and 105 degrees Celsius and to select the final steady state temperature from the range of 100 and 115 degrees Celsius, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Response to Arguments

Applicant's arguments filed 11/22/05 have been fully considered but they are not persuasive. Applicant argues that Stern teaches away from being capable of operating at the claimed temperature ranges and there is absolutely no suggestion in Stern of an apparatus or method that performs as claimed.

It has been held that differences in temperature does not support the patentability of subject matter encompassed by the prior art unless there is evidence indicating that such temperature is critical. Where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation. As pointed out in the above rejection, Stern discloses the general conditions of the claims and Applicant has not provided evidence showing that the claimed temperature ranges are critical.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rosiland S. Rollins whose telephone number is (571) 272-4772. The examiner can normally be reached on Mon.-Fri. 9:00 AM - 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3739

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Rosiland S Rollins
Primary Examiner
Art Unit 3739